



ON - THE - JOB

Sherrie M. Hayashi, Editor-in-Chief

Robyn B. Barkdull, Editor

2007 - A Year of Accomplishment

By Sherrie Hayashi, Commissioner

The end of the year always brings an opportunity to reflect on the accomplishments of the past year.

Working for the Labor Commission has always instilled a sense of pride in me -- for the type of work we do, and the principle we aspire to -- of achieving a safe and fair workplace for all. I hear this same sense of pride from many of the people who appreciate and are committed to the purpose of the Labor Commission and who are responsible for making us such a successful organization. We are a small agency, and over the last year and half I have learned there is a perception that we do our job, and do our job well. But to many on the outside, the overall

breadth and depth of accomplishments are often overlooked. Did you know in 2007, that the Labor Commission:

- collected \$1,752,462 for claimants on employment discrimination cases and claims for unpaid wages;
- monitored over 77,000 employers to make sure they maintain required workers compensation insurance coverage;
- completed 1500 inspections/surveys and interventions to ensure safe and healthy workplaces;
- oversaw the inspection of over 20,000 boilers, elevators, and pressure vessels throughout the state, and

- 1,520 new cases were filed in our Adjudication Division.

We did all of this and much more because of the dedication of each and every one of the 122 people who make up the Labor Commission, dedicated in each of their own aspects to the health, safety, and fairness of Utah's workplaces. I hope



"Working for the Labor Commission has always instilled a sense of pride in me -- for the type of work we do, and the principle we aspire to -- of achieving a safe and fair workplace for all."

- Commissioner Sherrie Hayashi

that each of you take pride in what we have accomplished and

continue to support us as your partners in Achieving Safety and Fairness in Utah's Workplaces. For more of our accomplishments, visit our Website for the 2007 Annual Report. Happy New Year everyone!

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Legislative Update

It's that time of year again when we begin preparing for the 2009 Legislative Session. The Commission is proposing three bills this year:

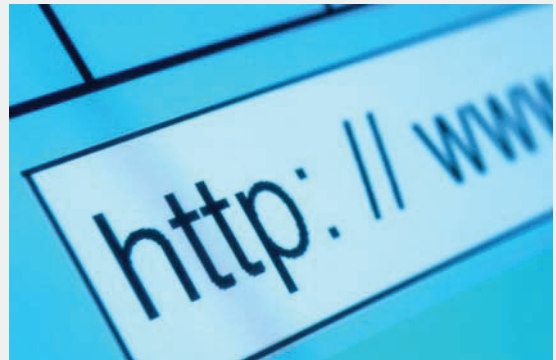
1) Dependent Benefit Changes (Sen. Mike Dimitrich): This bill will remove the Adjudication Division's responsibility for overseeing the management of dependent's benefits. Payment of a minor child's dependent benefits will be paid directly to a parent or guardian, rather than held in trust by the Commission. The Commission will also no longer issue orders for payment on all death benefit cases, rather the insurance carriers will handle the claim. Similarly to how other aspects of the workers' compensation system works if there is a dispute regarding dependent benefits, the disputing party may file an application for a hearing before an Administrative Law Judge.

2) Penalty for Direct Payment of Workers' Compensation benefits (Sen. Mike Dimitrich): In Utah, all employers are required to maintain workers' compensation insurance. Medical expenses, compensation, and other benefits due to a work related injury, should be under the oversight and responsibility of that employer's workers' compensation insurance carrier. This proposed bill will impose a penalty against employers who directly pay benefits to or on behalf of an injured employee.

3) Repeal of Labor Commission involvement in Temporary Staffing Licensing (Sen. Ross Romero): The Labor Commission, through its Antidiscrimination & Labor Division, is currently charged with an antiquated responsibility of Licensing Employment Agencies. The original purpose was for the Labor Commission to oversee and regulate the fees charged to an individual wishing to seek employment through an employment agency. As this practice no longer occurs and employees are not charged fees by employment agencies, the UALD



Advisory Council has recommended that we repeal the provisions pertaining to the Labor Commission's role of licensing these organizations. The substantive provisions of the law would remain in effect which require city or county licenses and bonding requirements for employment agencies.



Get on-line with the Labor Commission's newly redesigned website! February 2008

Come check us out for the latest critical information, related links, on-line publications, forms and assistance. We welcome your comments as you navigate through our new site. Let us know how we can make your experience successful.

www.laborcommission.utah.gov

Labor Commissioner Appoints New Director

By Robyn B. Barkdull – Public Information Officer

Commissioner Sherrie Hayashi recently announced the appointment of Mr. David Lamb as Administration Division Director, replacing Gordon Linnett who retired in December, 2007.

David Lamb, a CPA, brings to the Commission over 15 years experience with the appropriations and state budget process, most recently as Accounting Manager for Risk Management with the State of Utah. His qualifications and expertise will prove essential as he tackles his primary responsibility as Director - to oversee the \$11.2 million budget required to sustain the Commission today. Additionally, Mr. Lamb will have the responsibility of interfacing with the State's Accounting System (FINET) and the Commission's data base to provide support services in accounting, payroll, travel, purchasing, as well as personnel issues.

Mr. Lamb graduated cum laude from Brigham Young University with a Master's Degree in Accounting. He started his career as an auditor with a national CPA firm in Colorado Springs and moved to Salt Lake City a few years later to work for another national CPA

firm. His areas of expertise were banking and manufacturing. After the tax season was over each year, he gained experience as the firm's office government audit specialist, supervising the audits of several government entities including Salt Lake City, Salt Lake Airport, the Davis County School District and Utah State Internal Service Funds.



His first experience with state government was as the law office administrator for the Attorney General's office. He has also been deputy director for the Department of Administrative Services and Director of Administration for State Risk Management. David Lamb is a member of Utah Association of Certified Public Accountants and the American Institute of Certified Public Accountants.

Sweet Candy Company still SHARP for Safety

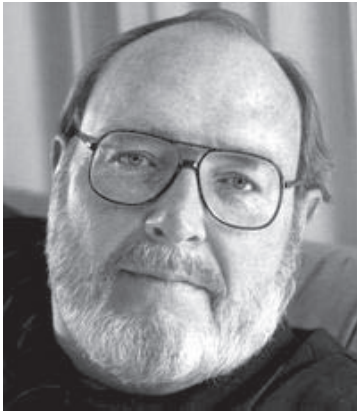
Utah OSHA's Safety and Health Achievement Recognition Program (SHARP) recognizes small employers who operate an exemplary safety and health management system. The Utah OSHA Consultation team recently awarded the 150 employees of Sweet Candy Company with a renewal of this prestigious safety award. Sweet Candy originally became the first Utah SHARP recipient in 2003.

Acceptance into SHARP by OSHA is an achievement of status that will single you out among your business peers as a model for worksite safety and health. Upon receiving SHARP recognition, your worksite will be exempt from programmed inspections during the period that your SHARP certification is valid.

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Robert Newman, UOSH Consultant and Commissioner Sherrie Hayashi present SHARP award to David Pierce, Sweet Candy Company HR and Safety Manager.



Eddie P. Mayne Memorial Resolution

*Be it resolved by the Utah Labor
Commission and the Workers'
Compensation Advisory Council:*



WHEREAS, Senator Eddie P. Mayne served over 25 years on the Workers' Compensation Advisory Council, dedicated to seeking fair labor practices in behalf of working men and women throughout Utah; and

WHEREAS, Eddie Mayne believed that all men and women had an equal claim to work in a safe and fair environment, with all of the rights to which they were entitled; and

WHEREAS, Eddie Mayne donated countless hours assisting the Labor Commission with issues facing Utah's workforce, as well as sponsoring legislation supported by the Commission; and

WHEREAS, Eddie Mayne was respected and admired by employer and employee representatives alike for his fairness, integrity and compassion for all; and

WHEREAS, Eddie Mayne was recognized for his great ability to bring opposing sides of labor issues together for negotiating compromises; and

WHEREAS, his friends at the Labor Commission and on the Advisory Council will miss his genuine friendship, dedicated service, and giant presence around our conference table;

NOW, THEREFORE, BE IT RESOLVED that the employees of the Utah Labor Commission and the members of the Workers' Compensation Advisory Council do pledge to carry on with the efforts that Senator Eddie P. Mayne strongly supported and cared passionately about.

BE IT FURTHER RESOLVED that we will remember Eddie as a great friend, a loyal supporter of the working class, and an honorable statesman. We view his passing as a great loss for all.

Original signed by:

Sherrie Hayashi, Commissioner

Alan L. Hennebold, Deputy Commissioner

Ralph Astorga, President, USWA Local 392

K. Dawn Atkin, Attorney, Atkin & Associates

Thomas Bingham, President, Utah Manufacturers Association

David R. Bird, Attorney, Parson Bahle & Latimer

Edward Holmes, M.D., RMCOEG

Reo Castleton, President, Salt Lake County Fire Dept. Local 1696

Brian Kelm, Attorney

James V. Olsen, President, Utah Food Industry Association

Joyce A. Sewell, Division Director, Industrial Accidents – Utah Labor Commission

Lane A. Summerhays, President, Workers Compensation Fund

Richard J. Thorn, President/CEO, Associated General Contractors

Brad Tibbitts, Director, Property & Casualty Division - Utah State Insurance Department

Commission Directors Announce Retirement

By Robyn B. Barkdull, Public Information Officer

While most of us here at the Commission anticipate a new work year with its challenges and rewards, two of the Commission's Division Directors look forward to a much different type of scenario. Following years of dedicated service, C. Gordon Linnett, Administrative Division Director, and Joyce A. Sewell, Industrial Accidents Division Director, both retired effective the end of December, 2007.



Gordon Linnett began his state employment in 1973 as an Internal Auditor with the Utah Department of Transportation. He was hired by the Labor Commission (then called the Industrial Commission of Utah) as an Accounting and Budget Officer in 1979 and was most recently serving as the Director of Administrative Services. Mr. Linnett has a BS in accounting and an MPA from Brigham Young University and is also a Certified Public Manager.

As director, Mr. Linnett's primary responsibility involved overseeing all budget matters at the Commission. While employed with the Commission, he saw the agency grow and the budget increase to the current \$11.2 million budget the Commission requires today.

In addition, Mr. Linnett oversaw the other responsibilities of the Division which included interfacing with the State's Accounting System (FINET) and the Commission's data base to provide support services in accounting, payroll, travel, and purchasing. The Division also oversees personnel issues. Until 2006, information technology was also part of the Administration Division and its oversight was included in Mr. Linnett's responsibilities.

Gordon has been looking forward to retirement and now plans to take time for leisurely activities and spend a lot more time with his wife and family.

Joyce Sewell has a Master's Degree in Public Administration and in Health Services Administration and was Director of the Division of Industrial Accidents of the Utah Labor Commission for over 15 years.



In this capacity, she monitored insurance compliance by both employers and insurance carriers, overseeing the mediation program, reemployment, self-insurance and the medical fee schedule. Ms. Sewell drafted the rules for the workers' compensation program and recommended legislation related to the workers' compensation arena.

In addition, Ms. Sewell was also the administrator for the Uninsured Employers' Fund which pays the claim for claimants whose employer is without workers' compensation insurance and unable to pay the claim. She was also administrator for the Employers' Reinsurance Program, which pays approximately 1,800 claimants who become permanently and totally disabled as a result of a work-related accident before July 1, 1994.

Ms. Sewell was active in the International Association of Industrial Accidents Boards and Commissions (IAIABC) and has been a past president of the Association, as well as the past president of the Western Association of Workers' Compensation Boards. She hosted the Western Association in Salt Lake City in 2004.

Ms. Sewell now plans to move to Colorado to spend more time with her family there.

The Commission will feel a large void with both Joyce and Gordon retiring. We wish them the very best in all of their future endeavors and a happy, healthy retirement!

Appellate Court Decisions

The Utah Court of Appeals has recently issued several significant workers' compensation decisions. These decisions are summarized below. They can be read in full at www.utcourts.gov/courts/appell/.

Martinez v. Media-Paymaster Plus, et al., 2007 (2007 UT App 410 (issued December 28, 2007). The Utah Court of Appeals' most recent decision concludes this long-running saga. Since 1995, when the Utah Legislature amended § 413 of the Workers' Compensation Act, the Labor Commission had consistently held it is an injured worker's obligation to prove the elements of permanent total disability set out in § 413(1)(c). The Commission denied Mr. Martinez's claim because he had not established those elements. Mr. Martinez appealed to the Court of Appeals. In 2005, that Court ruled that it is not the injured worker's obligation to prove the elements set out in § 413(1)(c); instead, it was the employer's burden to prove that those elements did not exist.



At the request of the Labor Commission and Media-Paymaster Plus, the Utah Supreme Court agreed to review the Court of Appeals' decision. Earlier this year, the Supreme Court reversed the Court of Appeals and upheld the Commission's original interpretation of § 413(1)(c). The Supreme Court then remanded the case to the Court of Appeals to properly apply § 413(1)(c) to Mr. Martinez's appeal. The Court of Appeals has done that in its recent decision by affirming the Commission's original determination that Mr. Martinez is not eligible for permanent total disability compensation because he has not satisfied the requirements of § 413(1)(c).

LPI Services v. Labor Commission, 2007 UT App 375, issued November 23, 2007. In another case involving a claim for permanent total disability compensation, LPI argued that a Labor Commission rule conflicted with the statutory provisions of the Utah Workers' Compensation Act. Specifically, LPI argued that the Commission's rule 612-1-10.D.1, which sets wage standards that must be met before other work will be considered "reasonably available" to an injured worker, went beyond the requirements of § 413(1)(c)(iv) of the Act.

The Court of Appeals concluded that § 413(1)(c)(iv) of the Act implicitly granted the Commission discretion to define whether work is "reasonably available" to an injured worker. The Court then upheld the Commission's wage standards in rule 612-1-10.D.1 as a reasonable exercise of its discretion.

LPI has now asked the Utah Supreme Court to review the Court of Appeals' decision in this case.

Pinnacle Homes v. Labor Commission, 2007 UT App 368, issued November 16, 2007. Glen Ebmeyer, employed by Platinum Builders, fell off a roof that Platinum was installing on a house being built by Pinnacle Homes. Pinnacle was organized as a corporation which was owned by three individuals who also served as the corporation's only officers and agents. Neither Platinum nor Pinnacle maintained workers' compensation insurance. The Labor Commission held Platinum liable for workers' compensation benefits as Mr. Ebmeyer's direct employer and also held Pinnacle liable as Mr. Ebmeyer's "statutory employer" under § 34A-2-103 of the Utah Workers' Compensation Act.

In challenging the Commission's decision before the Court of Appeals, Pinnacle argued it had exercised its right under § 34A-2-104(4) of the Act to exclude its corporate officers from the status of "employees." Pinnacle then argued that, because it had no employees, it did not qualify under § 34A-2-103 as a "statutory" employer. The Court of Appeals rejected this argument and instead affirmed the Commission's determination that, because Pinnacle did not maintain workers' compensation insurance and had no workers' compensation insurance carrier, it could not rely on § 34A-2-104(4) to exclude its officers as employees. Furthermore, even if the exclusion procedure under § 34A-2-103 were available to Pinnacle, Pinnacle had failed to provide the written notice of exclusion required by the statute. Consequently, the corporate officers remained Pinnacle's employees, thereby leaving Pinnacle subject to liability as Mr. Ebmeyer's statutory employer.

Appellate Court Decisions

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Pinnacle also argued that, even if it was an employer, it could not be considered Mr. Ebmeyer's "statutory employer" because it did not maintain control or supervision over Platinum, Mr. Ebmeyer's direct employer. The Court of Appeals rejected this argument as well, noting that as the project owner, Pinnacle naturally had the right to control the work of Platinum, its roofing subcontractor.

Ameritech Library Services v. Labor Commission, 2007 UT App 305, Issued September 20, 2007. Tamara Edmonds developed carpal tunnel syndrome as a result of work and non-work factors. The Labor Commission ordered Ameritech to pay the entire cost of Ms. Edmonds' medical treatment. Ameritech appealed, arguing that Ms. Edmonds' medical expenses should be apportioned between work and non-work causes, and that Ameritech should only be required to pay the portion attributable to Ms. Edmonds' work.

The Court of Appeals concluded that the Utah Occupational Disease Act authorized apportionment of disability compensation paid to a worker suffering from an occupational disease, but did not authorize

apportionment of the worker's medical expenses. The Court of Appeals therefore affirmed the Commission's conclusion that Ameritech is liable for all Ms. Edmonds' expenses for medical treatment of her carpal tunnel syndrome. Ameritech has asked the Utah Supreme Court to review the Court of Appeals' decision.

Other decisions . . .

The Utah Court of Appeals also has issued decisions in the following cases pertaining to workers' compensation and occupational safety issues. The full text of these decisions is also available at www.utcourts.gov/courts/appell/.

Working RX v. Workers' Compensation Fund, 2007 UT App 276, Issued November 23, 2007.

Kummer v. Labor Commission, 2007 UT App 276, Issued August 9, 2007 (unpublished memorandum decision).

BC Towing v. Labor Commission, 2007 UT App 258, Issued July 27, 2007 (unpublished memorandum decision; cert. denied by Utah Supreme Court.)

The Rules Corner

Pursuant to authority granted by the Utah Legislature, the Commission has recently adopted or is considering the following substantive rules. If you have questions or concerns about any of these rules, please call the Labor Commission at 801-530-6953.



Rule 610-1-3. Adjudication	Attorney's Fees in Workers' Compensation Cases. This amendment increases cap on attorney's fees for applicants' attorneys by 12.9% to reflect the increase in benefit amounts over the last three years.	Published 1/01/08; may become effective 2/07/08.
Rule 610-3-3. Adjudication	Assignment of benefits. Technical amendment requiring that notice of proposed assignment must be provided to owners of annuity contracts.	Published 1/01/08; may become effective 2/07/08.
R612-4 Industrial Accidents	Premium rates. Sets workers' compensation insurance premium assessment rates necessary to fund the Employers' Reinsurance Fund, Uninsured Employers' Fund, and Workplace Safety Fund for 2008.	Published 11/15/07; effective 1/01/08.
R616-2-3 Boiler & Elevator	Boiler standards. Incorporates by reference the 2007ASME Boiler and Pressure Vessel Code.	Published 11/15/07; effective 12/24/07.

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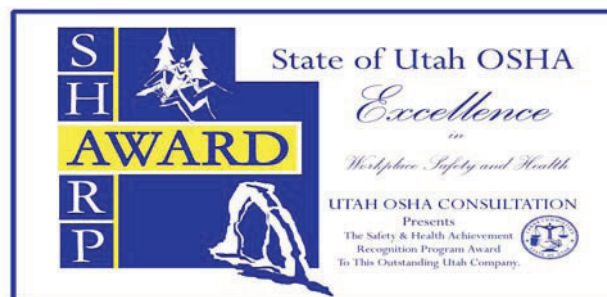
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Sweet Candy Co. from page 3

M. Richard Kay is President of Sweet Candy Company and their Safety Program is under the direction of David Pierce, H.R. Manager.

Mr. Pierce, who accepted the award from UOSH, credits the employees of Sweet Candy for the exceptional way in which they perform the duties of their job - always keeping safety standards foremost in their goals.



Free factory tours of Sweet Candy Company can be scheduled by calling (801) 866-1444. Come and see what makes Sweet Candy a great and safe place to work. They'll even throw in a sample of Salt Water Taffy or one of their other best selling candies!

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